

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH DAN BAKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52276

FILED

MAR 11 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of lewdness with a child under the age of 14. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge. Appellant Joseph Baker raises two claims on appeal.

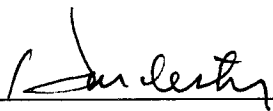
First, Baker claims that the district court erred by admitting hearsay evidence corroborating the victim's claim of previous sexual abuse by her step-brother. Even assuming that the challenged testimony was hearsay, Baker moved for the admission of evidence of the prior abuse to show that the victim had the experience, ability, and knowledge to contrive a claim of sexual abuse pursuant to Summitt v. State, 101 Nev. 159, 697 P.2d 1374 (1985). Therefore, he cannot demonstrate that he was prejudiced by consistent testimony.¹ See Carter v. State, 121 Nev. 759, 769, 121 P.3d 592, 599 (2005) ("A party who participates in an alleged error is estopped from raising any objection on appeal.").


¹Baker expressly stated that he was not moving to admit evidence of a prior false allegation under Miller v. State, 105 Nev. 497, 779 P.2d 87 (1989). Therefore, the admission of evidence that the prior abuse had actually occurred was necessarily contemplated by Baker's motion.


Second, Baker claims that there is insufficient evidence to support his conviction. Here, the victim testified that when she was 13 years old, Baker, Baker's 10-year-old daughter, and she were sleeping in the back of Baker's van during a trip to Mt. Charleston when Baker reached underneath her pants and underwear and placed his finger in her vagina and fondled her. This evidence alone was sufficient to support the conviction. See Mejia v. State, 122 Nev. 487, 493 n.15, 134 P.3d 722, 725 n.15 (2006) (“[T]his court has ‘repeatedly held that the testimony of a sexual assault victim alone is sufficient to uphold a conviction’ so long as the victim testifies with ‘some particularity regarding the incident.’” (quoting LaPierre v. State, 108 Nev. 528, 531, 836 P.2d 56, 58 (1992))). In addition, multiple witnesses confirmed that the victim was crying after the incident, and a SANE nurse testified that her examination of the victim revealed an abrasion consistent with recent penetration. We conclude that this evidence was sufficient for a rational juror to find beyond a reasonable doubt that Baker was guilty of lewdness with a child under the age of 14. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); NRS 201.230(1).

Having considered Baker's claims and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk